

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDY C. WEISSERT,

Plaintiff,

v.

NICOLE M. COOK, THOMAS M.
PHILLIPS and BRIAN GRILL,

Defendants.

Case No. 1:05-CV-335

Hon. Richard Alan Enslen

ORDER TO SHOW CAUSE

This matter is before the Court on Plaintiff Randy C. Weissert's Motion for Default Judgment against Defendants Nicole M. Cook and Thomas M. Phillips pursuant to Federal Rule of Civil Procedure 55(b)(2).

In April 2005, Plaintiff commenced this action against Defendants in Montcalm County Circuit Court. On May 11, 2005, Defendant Brian Grill removed this action to this Court. Defendant Grill served notice of that removal on the Clerk of the Montcalm County Circuit Court and Plaintiff's counsel. Defendant Grill did not serve notice of removal on Defendants Cook and Phillips.

Thereafter, the Court observed that Defendants Cook and Phillips had not appeared, pled or otherwise defended their interests in this Court and the Court urged Plaintiff to apply for default. Plaintiff applied for default and the Clerk of the Court entered default against Defendants Cook and Phillips on September 7, 2005. The next day the Clerk received and docketed papers filed in Montcalm County Circuit Court. Contained therein were Defendants Cook and Phillips' answers to Plaintiff's Complaint, which were submitted *pro se* and bear the Montcalm County Clerk's seal

as being filed on May 13, 2005. Thus, it appears that Defendants Cook and Phillips have answered Plaintiff's Complaint and that the entry of default against Defendants Cook and Phillips was improvidently entered.¹

THEREFORE, IT IS HEREBY ORDERED that Plaintiff Randy C. Weissert's Motion for Default Judgment (Dkt. No. 22) is **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiff shall **SHOW CAUSE** in writing as to why the Court should not set aside the entry of default pursuant to Rule 55(c) within **14 DAYS** of this Order.

IT IS FURTHER ORDERED that Defendants Cook and Phillips may respond in writing within **14 DAYS** of the filing of Plaintiff's briefing ordered herein.

DATED in Kalamazoo, MI:
January 12, 2006

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE

¹ The Court notes that Defendants Cook and Phillips have failed to attend a Rule 16 Conference held on November 1, 2005. Although the Court recognizes that Defendants Cook and Phillips' continued failure to comply with Court orders may necessitate entry of default against them, 10A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 2682 (3rd ed. 1998) (citing cases), the Court also recognizes that Defendants Cook and Phillips may not have received notice of the Rule 16 Conference. (*See* Dkt. No. 16). Nevertheless, it presently appears that the default entered against Defendants Cook and Phillips was improvident in light of their answers.